
(2009) 09 CAL CK 0010
In the Calcutta High Court
Case No : Writ Petition No. 8966 (W) of 2009

Bajnath Shaw and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

West Bengal Municipal Act, 1993 — Section 217

Citation : (2009) 09 CAL CK 0010

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Prantik Ghosh, for the Appellant; Pradip Roy Chowdhury for Municipality, Souvik Sen for Added Respondents, Asha G. Gutgutia and Dipanwita Ghosh Chowdhury for the State, for the Respondent

Final Decision : Allowed

Judgement

Biswanath Somadder, J.—Heard the learned Advocates for the parties.

2. Three writ petitioners have joined together to file the instant writ petition challenging the order of suspension of building plan duly approved by Kanchrapara Municipality on 12th March, 2008. The said order was issued by the Chairman of Kanchrapara Municipality on 9th April, 2009. According to the learned Advocate for the petitioners, they had earlier approached this Court by filing a writ petition being W.P. No. 117 4 (W) of 2009. That writ petition was disposed of by an order dated 2nd April, 2009 passed by Pinaki Chandra Ghose, J. It has been observed by the Court in the said order that after granting sanction of building plan by the Municipal authorities, the said authorities had no right even to interfere, if construction was carried on in accordance with the sanctioned plan. However, if there was any deviation, it was observed that the Court's order dated 2nd April, 2009 would not stand in the way of the Municipal authorities to cause an enquiry into the matter and take steps in accordance with the provisions of law.

3. It appears that after the said order was passed by the Court on 2nd April, 2009, the Chairman of the Kanchrapara Municipality issued the impugned order dated 9th April, 2009, whereby the building plan approved by the Chairman on 12th March, 2008 was temporarily suspended due to suppression of fact. In the said order, the Chairman of Kanchrapara Municipality also observed that it was a matter of regret that the writ petitioners had submitted plan for approval without showing the existing structure in their holding which must be demolished, after taking permission from the Municipality. It was also observed by the Chairman that the writ petitioners have neglected or suppressed fact, which was unwanted.

4. Learned Advocate for the petitioners relied on Section 217 of the West Bengal Municipal Act, 1993 and submits that the Chairman of Kanchrapara Municipality had no power to either cancel or put under suspension the building plan approved earlier. According to the learned Advocate, such power has been given to the Board of Councilors, but not to the Chairman of the Municipality.

5. In my view, in order to decide the issue raised in the instant writ petition there is a necessity to look into the provision of Section 217 of the West Bengal Municipal Act, 1993, which, for convenience, is reproduced hereinbelow:

217. Power to Board of Councilors to cancel permission on the ground of material misrepresentation by applicant. - If, at any time, sanction or provisional sanction to erect any building has been given and the Board of Councilors is satisfied that such sanction was given in consequence of any material misrepresentation or fraudulent statement contained in the plans, elevation sections or specifications or land or any material particulars submitted in respect of such building, it may cancel such sanction, and any work done there under shall be deemed to have been without sanction.

6. On a plain reading of the above quoted provision of law, it is clear that the power for cancellation of permission for erecting any building, after obtaining sanction or provisional sanction, on the ground of material misrepresentation, by an applicant in whose favour such permission has been granted, lies with the Board of Councilors alone. The power to cancel permission, in my view, shall also include power to suspend such permission/sanction. Thus, there cannot be any doubt that the Chairman of a Municipality cannot have the power, u/s 217 of the West Bengal Municipal Act, 1993 even, for suspension of building plan, such power being vested absolutely with the Board of Councilors.

7. In the circumstances, the contention of the learned Advocate for the writ petitioners is upheld. The impugned order passed by the Chairman of Kanchrapara Municipality, dated 9th April, 2009, being Annexure "P-10", to the writ petition, suspending the building plan approved on 12th March, 2008, is liable to be quashed and is hereby quashed.

8. This order shall, however, not prevent the Board of Councilors of the concerned municipality to take steps or initiate action, if not already done against the writ petitioners, u/s 217 of the West Bengal Municipal Act, 1993. Since no

affidavits have been called for, allegations made in the writ petition, as against the answering respondents, are deemed to be not admitted.

9. The writ petition is thus allowed, subject to the observation as above.

10. Xerox certified copy of this order, if applied for, be given to the learned Counsel for the parties.